

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

<b>EVA S. COOLEY</b>	§	<b>PLAINTIFF</b>
	§	
<b>v.</b>	§	<b>Civil No. 2:22-cv-14-HSO-RHWR</b>
	§	
<b>LAMAR COUNTY SHERIFF DEPARTMENT et al.</b>	§	<b>DEFENDANTS</b>
	§	

**ORDER OVERRULING PLAINTIFF’S OBJECTION [6], ADOPTING  
MAGISTRATE JUDGE’S REPORT AND  
RECOMMENDATION [5] AND DISMISSING CASE WITHOUT PREJUDICE**

BEFORE THE COURT is Plaintiff Eva S. Cooley’s Objection [6] to United States Magistrate Judge Robert H. Walker’s Report and Recommendation [5], which recommends dismissing this case without prejudice for failure to prosecute and abide by Orders of the Court. After due consideration of Plaintiff’s Objection, the Magistrate Judge’s Report and Recommendation [5], the record, and relevant legal authority, the Court finds that Plaintiff’s Objection should be overruled, that the Magistrate Judge’s Report and Recommendation [5] should be adopted as the finding of the Court, and that Plaintiff’s claims should be dismissed without prejudice.

**I. BACKGROUND**

**A. Procedural history**

On January 27, 2022, pro se Plaintiff Eva S. Cooley (“Plaintiff” or “Cooley”) filed a Complaint [1] in this Court, asserting various deprivations of her constitutional rights under 42 U.S.C. § 1983 and violations of state law.

Compl. [1] at 1-2. Cooley also filed a Motion [2] for Leave to Proceed in forma pauperis (“IFP”). Mot. [2]. On January 31, 2022, the Court denied Cooley’s Motion [2] after reviewing her application and finding that she had failed to satisfy the requirements of 28 U.S.C. § 1915(a). Order [3] at 1. The Court based its denial on the “relative improbability of the truthfulness of the information” provided by Cooley and “numerous inconsistencies” in her Motion [2]. *Id.* at 2.

The Court directed Cooley to either file a new application to proceed without prepaying the filing fee or pay the \$400.00 civil filing fee on or before February 18, 2022. *Id.* at 3. Cooley was warned that “that failure to comply with this or any order of the Court, or failure to keep the Court apprised of her current address” could result in dismissal of her case pursuant to Federal Rule of Civil Procedure 41(b). *Id.* Cooley did not respond or comply with this Order [3].

On February 28, 2022, the Court entered an Order [4] to Show Cause, directing Cooley to explain in writing on or before March 14, 2022, why this case should not be dismissed for her failure to comply with the Court’s previous Order [3]. Order [4]. The Court noted that its earlier Order [3] was mailed to Cooley at her address of record, but to date it had received no response from her. *Id.* at 1. Cooley did not respond to this Order [4].

B. Magistrate Judge’s Report and Recommendation [5]

On March 30, 2022, the Magistrate Judge entered a Report and Recommendation [5] recommending that this case be dismissed without prejudice for Cooley’s failure to comply with the Court’s Orders. R & R [5] at 1. The

Magistrate Judge noted that Cooley had not complied with the Court's Order [3], requiring her to submit a new IFP application or pay the civil filing fee, and had not responded to the Court's Order [4] to Show Cause. *Id.* at 3. Accordingly, the Magistrate Judge found that Cooley was no longer interested in pursuing this litigation and that a lesser sanction would not prompt diligent prosecution. *Id.* (citing *Rice v. Doe*, 306 F. App'x 144, 146 (5th Cir. 2009)).

C. Plaintiff's Objection

On April 18, 2022, Cooley filed a Response [6] to the Court's Order [4] to Show Cause. Resp. [6]. Cooley maintained that she had just received the Court's Order [3] denying her Motion [2] to proceed IFP and asked the Court to refrain from closing her case for 30 days so that she could pay the \$400.00 civil filing fee. *Id.* at 1-2. Out of an abundance of caution, the Court construes Cooley's Response [6] as an Objection to the Report and Recommendation [5]. *See Scott v. McGee*, No. 2:19-cv-123-TBM-MTP, 2022 WL 854816, at \*4 (S.D. Miss. Mar. 22, 2022) (construing a pro se plaintiff's filing as an objection to the Report and Recommendation). However, more than 30 days have passed since Cooley filed her Response [6], and she has still not tendered the filing fee or filed a new IFP application.

## II. DISCUSSION

A. Standard of Review

Because Cooley has filed a written Objection to the Magistrate Judge's Report and Recommendation [5], the Court "make[s] a de novo determination of those portions of the report and specified proposed findings or recommendations to

which objection is made.” 28 U.S.C. § 636(b)(1); *see also Longmire v. Gust*, 921 F.2d 620, 623 (5th Cir. 1991) (party filing written objections is “entitled to a *de novo* review by an Article III Judge as to those issues to which an objection is made”) (emphasis in original)). A court is not required to make new findings of fact in order to conduct a *de novo* review. *Warren v. Miles*, 230 F.3d 688, 694-95 (5th Cir. 2000). Nor is a court required to reiterate the findings and conclusions of the magistrate judge. *Koetting v. Thompson*, 995 F.2d 37, 40 (5th Cir. 1993).

However, where no party has objected to a magistrate judge’s report and recommendation, the Court need not conduct a *de novo* review of it. 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”). In such cases, the Court applies the “clearly erroneous, abuse of discretion and contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

#### B. Analysis

To the extent Cooley has not objected to portions of the Magistrate Judge’s Report and Recommendation [5], the Court has considered them and finds that those portions are neither clearly erroneous nor contrary to law. *Id.*

Construed broadly, Cooley’s Objection argues that her claims should not be dismissed under Rule 41(b), because she did not receive the Court’s Order [3] denying her IFP application until after the Magistrate Judge had entered the Report and Recommendation [5]. Resp. [6] at 1. Cooley requested 30 additional days

to pay the civil filing fee in lieu of the Court dismissing her case. *Id.* at 1-2.

However, more than 30 days have passed since Cooley filed her Response [6] and she has not paid any portion of the filing fee, nor has she submitted a new IFP application.

Under Rule 41(b), dismissals are generally permitted only when “(1) there is a clear record of delay or contumacious conduct by the plaintiff, and (2) the district court has expressly determined that lesser sanctions would not prompt diligent prosecution, or the record shows that the district court employed lesser sanctions that proved to be futile.” *Campbell v. Wilkinson*, 988 F.3d 798, 802 (5th Cir. 2021) (quoting *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1191 (5th Cir. 1992)). Cooley was given notice on several occasions that a failure to comply with the Court’s Orders [3][4] could result in dismissal. Order [3] at 3; Order [4] at 2. She was also given an additional 30 days after the Court received her Objection to the Report and Recommendation [5] to comply with the Court’s Orders [3][4]. Despite notice of the consequences and additional time to comply, Cooley has not submitted a new IFP application or paid the civil filing fee. Such inaction represents a clear record of delay or contumacious conduct, and it is apparent that Cooley no longer wishes to pursue this lawsuit. The Court finds that a lesser sanction would not prompt diligent prosecution and thus dismissal without prejudice is warranted.

### III. CONCLUSION

As required by 28 U.S.C. § 636(b)(1), the Court has conducted an independent de novo review of the record and those matters raised in Plaintiff Eva S. Cooley’s

Objection, and concludes that Plaintiff's Objection should be overruled. The Court further concludes that the Magistrate Judge's Report and Recommendation [5] should be adopted as the finding of the Court.

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that, the Objection [6] filed by Plaintiff Eva S. Cooley in this case is **OVERRULED**.

**IT IS, FURTHER, ORDERED AND ADJUDGED** that, the Magistrate Judge's Report and Recommendation [5], entered in this case on March 30, 2022, is **ADOPTED** as the finding of this Court.

**IT IS, FURTHER, ORDERED AND ADJUDGED** that, this civil action is **DISMISSED WITHOUT PREJUDICE**. The Court will enter a separate Final Judgment in accordance with Federal Rule of Civil Procedure 58.

**SO ORDERED AND ADJUDGED**, this the 20th day of May, 2022.

*s/ Halil Suleyman Ozerden*

HALIL SULEYMAN OZERDEN  
UNITED STATES DISTRICT JUDGE